

HOUSE No. 1538

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Nangle

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to trusts and fiduciaries.

PETITION OF:

NAME:

David M. Nangle

DISTRICT/ADDRESS:

17th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO TRUSTS AND FIDUCIARIES. .

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 5-506 of Article V of Chapter 190B of the General Laws is hereby repealed.

SECTION 2. Chapter 203 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after Section 14B, the following two new sections:

Section 14C. With respect to a third person dealing with a trustee or assisting a trustee in the conduct of a transaction, if the third person acts in good faith and for a valuable consideration and without actual knowledge that the trustee is exceeding the trustee's powers or improperly exercising them:

(a) The third person is not bound to inquire whether the trustee has power to act or is properly exercising a power and may assume without inquiry the existence of a trust power and its proper exercise.

(b) The third person is fully protected in dealing with or assisting the trustee just as if the trustee has and is properly exercising the power the trustee purports to exercise.

Section 14D. (a) A third person may receive a certification of trust in lieu of receiving a copy of the trust instrument to establish the existence or terms of the trust. A certification of trust may be executed voluntarily or at the request of the person with whom the trustee is dealing.

(b) The certification of trust may confirm the following facts or contain the following information:

(1) The existence of the trust and date of execution of the trust instrument.

(2) The identity of the settlor or settlors of the trust.

(3) The identity of the currently acting trustee or trustees of the trust.

(4) The powers of the trustee.

(5) The revocability or irrevocability of the trust and the identity of any person holding any power to revoke the trust.

(6) When there are multiple trustees, the signature authority of the trustees, indicating whether all or less than all of the currently acting trustees are required to sign in order to exercise various powers of the trustee.

(7) The trust identification number, whether a social security number or an employer identification number.

(8) The manner in which title to trust assets should be taken.

(c) The certification shall contain a statement that the trust has not been revoked, modified, or amended in any manner which would cause the representations contained in the certification of trust to be incorrect and shall contain a statement that it is being signed by all of the currently acting trustees of the trust. The certification shall be in the form of an acknowledged declaration signed by all currently acting trustees of the trust.

(d) The certification of trust shall not be required to contain the dispositive provisions of the trust which set forth the distribution of the trust estate.

(e) A person may require that the trustee offering the certification of trust provide copies of those excerpts from the original trust documents and amendments thereto which designate the trustee and confer upon the trustee the power to act in the pending transaction. Nothing in this section is intended to require or imply an obligation to provide the dispositive provisions of the trust or the entire trust and amendments thereto.

(f) A person who acts in reliance upon a certification of trust without actual knowledge that the representations contained therein are incorrect is not liable to any person for so acting and the reliant will be fully protected and released to the same extent as though all such representations had been correct. A person who does not have actual knowledge that the facts contained in the certification of trust are incorrect may assume without inquiry the existence of the facts contained in the certification of trust. Actual knowledge shall not be inferred solely from the fact that a copy of all or part of the trust instrument is held by the person relying upon the trust certification. Any transaction, and any lien created thereby, entered into by the trustee named in the certification of trust and a person acting in reliance upon a certification of trust shall be enforceable against the trust assets. However, if the person has actual knowledge that such trustee is acting outside the scope of the trust, then the transaction is not enforceable against the trust assets. Nothing contained herein shall limit the rights of the beneficiaries of the trust against the trustee.

(g) A third person who acts in good faith pursuant to a certification under this section is not bound to ensure the proper application of trust property paid or delivered to the recipient thereof.

(h) A person's failure to demand a certification of trust does not affect the protection provided that person by section fourteen C, and no inference as to whether that person has acted in good faith may be drawn from the failure to demand a certification of trust.

Nothing in this section is intended to create an implication that a person is liable for acting in reliance upon a certification of trust under circumstances where the requirements of this section are not satisfied.

SECTION 3. Chapter 209 of the General Laws as appearing in the 2006 Official Edition is hereby amended by inserting after Section 14B the following new section:

Section 14C. Generation-Skipping Transfer Tax: Division of Trusts, Definitions.

(a) Whenever, by virtue of an allocation of a generation-skipping transfer tax exemption (or exemptions, in the case of more than one transferor), property held or to be held in a trust would otherwise be partially exempted from the generation-skipping transfer tax, a trustee is hereby authorized, without prior approval or leave of any court, i) to divide the trust into separate trusts, whether or not equal, and ii) to allocate property and the generation-skipping transfer tax exemption among such separate trusts, in order to create trust that are either wholly exempt from or wholly subject to the generation-skipping transfer tax. The trust shall be severed on a fractional basis, but the separate trusts need not be funded with a pro rata portion of each asset held by the undivided trust. The trusts may be funded on a non-pro rata basis provided funding is based on either the fair market value of the assets on the date of funding or in a manner that fairly reflects the net appreciation or depreciation in the value of the assets measure from the date of death to the date of funding.

72 (b) Any trust or trusts created pursuant to this section shall be treated as separate trusts to be held,
73 administered and accounted for separately, but they shall remain substantially identical in all respects to
74 the original trust.

75 (c) No liabilities shall be imposed on any trustee who in good faith takes or fails to take any action
76 authorized by this section.

77 (d) This section applies to any trust that is subject or may become subject to the generation-
78 skipping transfer tax.

79 (e) The following definitions shall apply to this section:

80 (1) "Generation-Skipping Transfer Tax" means the tax imposed under Chapter 13 of the Internal
81 Revenue Code of 1986 (as amended from time to time) or any successor provisions of future Internal
82 Revenue laws;

83 (2) "Trust" means any trust, with additions thereto, whenever and however created, or any separate
84 share of a trust, and without limitation any arrangement, other than an estate, which, although not a trust,
85 has substantially the same effect as a trust (including by way of illustration, but not limitation, life estates,
86 remainders, estates for years, and insurance and annuity contracts; and

87 (3) "Trustee" means an original, additional or successor trustee, whether or not appointed by the
88 court, and, in the case of an arrangement which is not a trust but is treated as a trust for purposes of the
89 generation-skipping transfer tax, includes, without limitation, each person in actual or constructive
90 possession of the property subject to such arrangement.